Direct Transit, Inc. *and* Teamsters Local Union No. 166 a/w International Brotherhood of Teamsters, AFL–CIO. Case 31–CA–19095

November 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

This case presents the issue of whether the Respondent committed violations of Section 8(a)(1) and (3) by engaging in various actions, including the closure of its California maintenance facility, in response to the Union's organizing effort, and whether a bargaining order and the reopening of the Respondent's maintenance facility are appropriate remedies.[1]

The Board has considered the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Direct Transit, Inc., Daggett, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(b) and reletter the paragraphs accordingly.

''(b) Offer Ivan Elvik reinstatement to his former position of leadman and make him whole for any losses he incurred as a result of his unlawful demotion.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT shut down a maintenance facility and terminate our employees because they seek union affiliation for purposes of collective-bargaining representation.

WE WILL NOT demote an employee from a leadman position because of his activity on behalf of union organization.

WE WILL NOT threaten employees with shop closure because of their interest in or activity on behalf of the Union.

[1] On July 27, 1992, Administrative Law Judge James L. Rose issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also asserts that under the Supreme Court's decision in *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 253 (1965), it was free to close its Daggett, California facility so long as the closure did not chill unionism at its remaining facilities—evidence which it alleges the General Counsel did not show. We find the Respondent's reliance on *Darlington* misplaced because the holding in that case, in relevant part, applies to a partial closing of a business rather than, as here, a relocation of work. Work relocations have been ''explicitly distinguished from partial closings in *Darlington* and have been found consistently to violate Section 8(a)(3) when motivated by antiunion animus.'' *Lear Siegler, Inc.*, 295 NLRB 857, 860 (1989). Thus, there is no need to show a chill on unionism at the remaining facilities.

[3] We agree with the judge that a bargaining order is warranted to remedy the Respondent's misconduct under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The Respondent's unfair labor practices included coercive interrogations, multiple threats of plant closure, and the actual closure of its California maintenance facility. The severity of the Respondent's misconduct is further underscored by the fact that the drastic measure of closing its facility was carried out pursuant to instructions from top management officials at its headquarters office. In addition, the Respondent's closure violation, which is among the most flagrant of unfair labor practices and which threatens the livelihood of employees, occurred within days of the employees' commencing active solicitation for the Union and it affected the entire unit.

We are convinced that the Respondent's unfair labor practices are of the type that have lingering effects and are not readily dispelled by traditional remedies. Further, the restoration of the facility (which we order) would not itself provide the basis for a free and fair election. Employees would still have on their minds the drastic measure that Respondent took to punish employees for their efforts to unionize. Accordingly, we agree with the judge that an election would not reliably reflect genuine uncoerced employee sentiment and that a bargaining order is necessary and appropriate to protect majority sentiment which was expressed through authorization cards. *Kona 60 Minute Photo*, 277 NLRB 867 (1985); *Quality Aluminum Products*, 278 NLRB 338 (1986); *Reno Hilton*, 282 NLRB 819 (1987).

[4] Contrary to the Respondent's contention, we agree with the judge's proposed remedy requiring the reopening of its maintenance facility in Daggett, California. We shall, however, permit the Respondent to introduce evidence at the compliance stage of this proceeding to demonstrate that reopening of the facility is unduly burdensome.

The judge's recommended Order and notice to employees inadvertently omits affirmative language requiring the reinstatement of Ivan Elvik to the position of leadman and a make-whole remedy for his unlawful demotion from that position. Accordingly, we modify the judge's recommended Order and the notice to provide for this remedial relief.

WE WILL NOT interrogate employees about their interest in or activity on behalf of the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the their rights guaranteed by Section 7 of the Act.

WE WILL reestablish and resume operations at our Daggett, California facility in a manner consistent with the level and manner of operation that existed before the facility was closed on October 6, 1991.

WE WILL offer reinstatement to all employees laid off on that date who held a position in the following bargaining unit:

> All mechanics, mechanic leadman, mechanic trainees, and fuel and wash employees employed at our facility located at 34760 Daggett/Yermo Road, Daggett, California; but excluding office clerical employees, guards, and supervisors, as defined in the Act.

WE WILL make them whole for losses they incurred as a result of the discrimination against them, with interest.

WE WILL offer Ivan Elvik reinstatement to his former position of leadman and make him whole for any losses he incurred as a result of his unlawful demotion.

DIRECT TRANSIT, INC.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me on May 21 and 22, 1992, at San Bernardino, California, on the General Counsel's complaint, as amended, which alleged that Direct Transit, Inc. (the Respondent or the Company) shut down its Daggett, California maintenance facility in violation of Section 8(a)(3) of the National Labor Relations Act (Act). The Respondent is also alleged to have violated Section 8(a)(1), (3), and (5) of the Act.

The Respondent filed an answer generally denying that it engaged in any unfair labor practices, and affirmatively contends that the termination of business at the Daggett facility was motivated solely by economic considerations.

All parties were represented by counsel and were given the opportunity to call, to examine and cross-examine witnesses, and to file posthearing briefs. On the record as a whole,[1] including my observation of the witnesses, briefs, and arguments of counsel, I make the following

[1] Following the close of the hearing, the Respondent filed a motion to reopen the record for the receipt of certain documents. Inasmuch as these documents were in the possession of the Respondent at the time of the hearing aand no good cause was advanced why they were not offered then, the Respondent's motion was denied.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is an Iowa corporation engaged ininterstate trucking, with its principal office located in North Sioux City, South Dakota. In the conduct of its business, the Respondent annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of South Dakota and annually derives gross revenues in excess of $500,000. The Respondent admits, and I find, that it is an employer engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act.

Teamsters Local Union No. 166 a/w International Brotherhood of Teamsters, AFL–CIO (the Union or the Charging Party) exists for the purpose of representing employees of employers engaged in interstate commerce and was the designated representative of certain employees of the Respondent concerning wages, hours, and other terms and conditions of employment. I conclude that the Union was at all times material a labor organization within the meaning of Section 2(5) of the Act.

II. THE FACTS

Edgar Foster, the Respondent's vice president for maintenance, testified that in 1991[2] the Company employed about 1100 drivers, and had nearly that many trucks. In 1991 the Company added about 180 trucks to its fleet in addition to buying a fleet of refrigerated equipment formally belonging to the bankrupt J. H. Ware Company.

Foster also testified that the maintenance facility at Daggett, California (near the intersection of Highways I-40, I-15, and State 58 in southern California), was opened in May 1988 and became its sixth such facility. The others are at Moosic, Pennsylvania; Portage, Indiana; Fulton, Missouri; Louisville, Ohio; and, North Sioux City, South Dakota.

At the time material to this case, employed at Daggett were Service Manager Terry Harris, his assistant, Craig Koceski, and 15 employees in the bargaining unit, infra. The facility was open 24 hours a day, 7 days a week, with each shift typically maned by three employees. The Daggett employees were to fuel, wash, and otherwise service the Respondent's trucks and perform scheduled and minor maintenance as needed. With the closure of the Daggett facility, these services are performed elsewhere. The fueling is done under contract with oil companies, and the maintenance is deferred until the truck returns to one of the Respondent's other maintenance facilities.

In September organizing activity began for the Union with employee Ivan Elvik contacting the Union. He went to the Union's office, talked to a business agent, and received some authorization cards to be circulated among employees. On September 19 he began passing out cards, seven of which were signed and returned that day. Another three were signed on September 20 and 22 and October 7.

On September 26, counsel for the Union filed a petition in Case 31–RC–6871 and on that day sent a letter demanding recognition to Chuck Petersen, the Respondent's owner, with a copy to Harris. Foster testified that Harris called when he received the Union's letter, which he sent on via overnight express and ''I believe we got that in our office on a Mon-

[2] All dates are in 1991 unless otherwise indicated.

day; and I believe, also, the same day, September 30th of '91, we also got our own copy, or the next day.''

On September 30, Foster wrote Harris stating that effective October 11, five named employees would be laidoff. Then on October 5, Foster wrote that the Daggett facility would be closed immediately; thus, effective at 6 p.m. on October 5, 15 named employees were laid off. (These 15 constituted the entire bargaining unit.)

In brief, the General Counsel alleges that closure of the Daggett facility was the result of employees union activity, and an attempt by the Respondent to avoid recognizing and bargaining with the Union in violation of Section 8(a)(3) and (5) of the Act. Foster testified that the union activity had ''not a lot'' significance with regard to closing Daggett. The Respondent contends that the Daggett facility was closed solely for economic reasons.

The General Counsel also alleges that certain statements made by Harris and Koceski were violative of Section 8(a)(1) and that the demotion of Elvik on September 29 was violative of Section 8(a)(3). The Respondent denies these statements were made or that it engaged in any of the violations alleged.

III. ANALYSIS AND CONCLUDING FINDINGS

A. *Closure of the Daggett Facility*[3]

Although I do conclude, infra, that Harris and Koceski demonstrated animus toward the Union, such is not critical to my analysis of the closure issue since the decision to close was made by Foster without, apparently, any input from either Harris or Koceski. They credibly testified that they were suprised by this turn of events, neither having been given any indication from Foster that closure of Daggett was under consideration or that there was an economic problem involved in the California business.

Of critical significance is the timing of the Respondent's decision to close Daggett with the employees' union activity and the lack of evidence that there was any business necessity for doing so.

Foster learned of the union activity and the Union's demand for recognition probably on Saturday, September 28. He testified that Harris called him on receiving the demand letter and sent it on to North Sioux City by overnight mail. It was received on September 30. On that day the copy sent directly to North Sioux City was received. Foster's first letter to Harris that five employees would be laid off on October 11 was mailed on September 30. The letter telling Harris to close the facility and lay off all the employees effective October 5 was transmitted on October 5 and received that day.

Although Foster testified that he had been arguing to close Daggett for over a year, clearly the decision to close was a reaction to the employees' union activity. According to Harris, Foster never told there was any kind of cost problem associated with operation of the Daggett facility. No steps had been taken prior to September 30 to close it. To the contrary, in September three employees were hired (including one on September 30), and plans were being made to train the Daggett employees to work on the newly acquired refrigerated trucks.

Until the employees designated the Union as their bargaining representative and the Union made a demand for recognition, the Respondent engaged in business as usual at Daggett. When Foster learned of the union activity, he set in motion the layoff of five employees. Then a few days later, he ordered the shutdown of the facility. There was no forewarning of these events. From these facts the conclusion is inescapable that Foster was motivated by the employees' union activity. Thus, without more, and irrespective of the unpersuasive economic defense, the General Counsel established a prima facie case of an 8(a)(3) violation.

Additionally, I note that the Respondent's economic justification for closing Daggett does not bear scrutiny. From this it may be inferred that the Respondent's true motive was one it sought to hide—namely, the employees' union activity. *Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466 (9th Cir. 1966). Further, the insufficiency of evidence offered at the hearing by the Respondent to support its affirmative defense may be considered in concluding that the General Counsel established a prima facie case of unlawful conduct. *Golden Flake Snack Foods*, 297 NLRB 594 (1990).

The burden became the Respondent's to prove that the employees' union activity did not motivate its act, or that it would have closed the Daggett facility when it did had there been no union activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st. Cir. 1981), cert. denied 455 U.S. 989 (1982).

The Respondent sought to meet this burden by arguing that economics and not union activity was the motivating consideration in closing Daggett. The problem, as testified to by Foster, was too much competition for loads coming out of California. He testified that California is a net importer of goods, thus it is relatively easy to obtain incoming loads at productive rates. However, because there is less business available going out, in order to avoid long layovers for drivers or leaving California empty, the Respondent had to lower its rates. This means that expenses for California runs exceed revenues.

There are three problems with the Respondent's economic argument as presented by Foster: (1) the only evidence of losses on California related runs is an unpersuasive document styled ''Direct Transit, Inc. 1991 Milage Analysis Revenue/Expenses''; (2) closing the Daggett facility could not address the alleged losses incurred on California trips because the work done there is still being done, but at other facilities, and there is no evidence that expenses at Daggett exceeded expenses at the others; and (3) the Respondent continues unabated to do business in California.

The document purporting to show the Respondent's revenues and expenses each month in 1991 does not set forth California expenses. There is a column giving companywide expenses and one for companywide revenues. A third column is California revenues. Subtracting the California revenues from the companywide expenses yields a net loss for California related trips in 1991 of $1,395,246. But this assumes that California expenses are identical to companywide expenses and there is no evidence, even in Foster's testimony, to support such an assumption.

[3] Although the layoff announced by letter of September 30 was, I believe, motivated by the employees' union activity and was therefore violative of Sec. 8(a)(3), its effect became moot with the closure announcement of October 5. Therefore, the initial layoff notice will not be further considered.

Further, the Respondent offered no evidence that expenses attendant to operating the Daggett facility exceeded expenses which would be incurred in any event. The Respondent did not explain how operating the facility at Daggett added to its losses on California related trips, or offer evidence that such was the case. As Foster testified, a maintenance facility such as Daggett is not revenue producing. It is ''a necessary evil.'' Trucks need to fueled, serviced, and maintenance performed. If such is not done at Daggett, it must be done elsewhere. Foster agreed that the work done at Daggett by bargaining unit employees is now being performed at other maintenance facilities and other facilities have added employees.

Even if the Company did suffer losses on California trips, there is no evidence that such was the result of costs at Daggett. The work that had been done at Daggett is still being done, but there is no evidence that it is now being done at less cost. Nor is there evidence that the Company's losses on California related trips became less after the closure of Daggett.

It is possible that the location of Daggett in relation to the Respondent's total California business was not optimum. It is also possible that California employee benefit laws and employer taxes would have a greater impact on the Respondent's expenses than the laws of other states. But there is no evidence that either of these possibilities is the case.

Finally, the Respondent continues to do business in California. Foster testified he thought the Company is now making fewer runs into California, but there is no evidence of this and his testimony was vague and ambiguous. As far as I am able to determine from the record in this matter, the Respondent continues to do the same level of business in California as prior to the closure of Daggett. In fact, according to the testimony of Foster, the Company's profitability on California related runs is better now than in 1988 before the Daggett facility was opened.

If the Respondent was losing money on California related runs, it could have ceased doing business in California. But it did not. Instead the Respondent closed the Daggett facility, which, on this record, could not have solved the problem.

Citing the well-known downturn in the national economy, and in that of California in particular, the Respondent argues that its decision to close the Daggett facility was the result of a change in the nature and direction of its business. Therefore, under the authority of *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981); and *Otis Elevator Co.*, 269 NLRB 891 (1984), it was permitted to do so.

The problem with this argument is that the Respondent did not in fact change the nature and direction of a significant facet of its business. Its business is interstate hauling, including runs into and out of California. None of this has changed. The only thing the Respondent changed as the result of closing Daggett involved where certain service and maintenance work would be performed. But there is no evidence that the service and maintenance functions performed at Daggett were consolidated at other facilities for economic reasons or that in making such a consolidation the Respondent reduced overall service and maintenance costs.

I therefore reject the Respondent's argument that closing Daggett was the type of entrepreneurial decision contemplated by *First National Maintenance*, supra, and *Otis Elevator*, supra.

Because the Respondent did not prove in general that California expenses exceeded revenues, nor specifically that the expenses attendant to operating the Daggett facility exceeded those which would have been incurred in any event, and because the Respondent continues to do business in California, I conclude that its economic defense is false.

The decision to close Daggett was clearly done without planning. Employees were hired within a few days of the closure decision. Harris was given no advanced notice. Further, Foster first decided to lay off five employees, then a few days later, decided to close the facility. These factors tend to prove that closure was a reaction to the employees' union activity.

From this, and the unpersuasive economic argument, I conclude it was the union activity which motivated the Respondent's action. I therefore conclude that by closing the Daggett facility, the Respondent violated Section 8(a)(3) of the Act.

Further, I conclude that as of September 30, the Union represented an uncoerced majority of the Respondent's employees in an appropriate bargaining unit (9 of the 15 employees in the unit had signed authorization cards) and the Respondent should be ordered to recognize and bargain with the Union.

B. *The 8(a)(1) Allegations*

1. Interrogation by Harris

Employee Dave Pedersen testified that on September 20 Harris said to him, ''Between you and I—not counting the company—just between you and I, have you heard anything about the union.'' Petersen said he had, that Ivan Elvik had given him a card the night before and he had signed it.

Pedersen also testified that about 30 to 45 minutes later, Harris asked him if Elvik had been bothering him to sign a card at work during working hours; and, a short time later, Harris asked Pedersen if Elvik had been badgering him at work.

The next day, Harris asked several employees, with Petersen present, who all had signed union cards.

Harris generally denied that he interrogated or questioned anyone about their union activity; however, he did not specifically deny the testimony of Petersen or conversations with Petersen on September 20 and thereafter.

I found Petersen to be a credible witness. Harris was not. For instance he was evasive on a matter about which there could be no doubt and others, including Koceski, testified—that three employees wore union baseball caps on September 30. Harris testified that he did not recall seeing them or that he ''might have.''

I conclude that Harris made the statements attributed to him and he thereby violated Section 8(a)(1) by interrogating employees concerning their protected activity.

2. Threats by Harris

During the September 21 conversation Harris had with several employees, he ''talked about what kind of jobs we would be having after the terminal closed down.'' Petersen testified that Harris talked about ''how hard the jobs are to find in California right now and, before he left, he turned around and called me traitor and left.''

As with the interrogation by Harris, I found Petersen to be credible and conclude that Harris in fact threatened employees that the facility would be shut down because they had signed union authorization cards and thus violated Section 8(a)(1). I note that Harris did not deny these statements.

Employee Charles Thorpe testified that about 3 days after he signed an authorization card, he and two other employees were present when Harris was talking to Koceski about ''signing the card saying that he was going to try find out who signed it and take the action of writing him up.''

Harris did not testify about this event, nor did Koceski, however, Koceski did testify that he talked to Harris about the union activity on several occasions.

I conclude that Harris made the statement attributed to him by Thorpe. Though directed to another supervisor, since employees were present, the statement by Harris constitutes a threat in violation of Section 8(a)(1).

Elvik testified that on October 1, after learning of the layoff notice of September 30, he approached Harris and said he would resign and ''call the whole thing off.'' Harris told him in effect that it was too late, ''He knew that Chuck (Peterson) wouldn't go for it; that he would close down; that he didn't want the drivers getting a hold of it.''

Elvik was a credible witness and I conclude that Harris made the statements attributed to him, which I conclude contained a threat in violation of Section 8(a)(1) of the Act.

3. Threats by Koceski

Employee Curtis Smith testified that he talked to Koceski about the Union on September 30, the first day employees wore union hats. Koceski ''expressed disfavor with unions and then said that they would close the shop before bringing the union in—or, letting the union come in.''

Koceski testified that he probably did talk to employees about unions ''when we found out what was going on.'' And he would have recounted his negative experiences and generally that he is antiunion. Koceski did not deny the statements attributed to him by Smith.

I conclude that Koceski threatened employees with shop closure in violation of Section 8(a)(1) of the Act.

C. *The Demotion of Ivan Elvik*

Ivan Elvik began employment at the Daggett facility in November 1988 as a mechanic trainee. Three months later he was promoted to mechanic and then to parts manager, a job he held about 1 year. He was then promoted to assistant manager. After about 6 months, he stepped down and became a leadman, which job he held until demoted on September 29. The parties stipulated that leadman is a bargaining unit position. The parties also agree that the demotion was on September 29, notwithstanding an exhibit which indicates September 10.

As noted above, in August, employees began discussing the possibility of a union and on September 18 Elvik went to the union hall and obtained authorization cards which he began passing out to employees on September 19.

On Sunday, September 29, Elvik arrived at work and was then told by Koceski that he had been demoted to mechanic. Koceski told Elvik something to the effect that the reason for the demotion was his leadership ability.

During Harris' interrogation of Petersen on September 20, Petersen said that he had received an authorization card from Elvik. Thus, Harris knew that Elvik was instrumental in the organizing effort. He demoted Elvik without warning 10 days after learning of this from Petersen and within a day or two after the Union demanded recognition. Elvik had been a long-term employee (for this facility) and apparently had done more than acceptable work as demonstrated by his promotions.

From these factors I conclude that the General Counsel made out a prima facie case that Elvik was demoted for reasons proscribed by Section 8(a)(3). Therefore the burden shifts to the Respondent to establish that union activity was not the motivating factor or that Elvik would have been demoted in any event. *Wright Line*, supra.

Harris testified that he demoted Elvik because he caught Elvik, Ron Moore, and Mitch Walker playing cards on duty. Though unclear from his testimony, it appears that Harris gave each a disciplinary warning and a 1-day suspension upon learning of the card playing; then, when this was confirmed by a driver at the end of September, he demoted Elvik. Though Harris testified that he had given each some kind of a writeup, no such document was offered into evidence by the Respondent. Nor did the Respondent offer the alleged statement from the driver.

However, Elvik admitted that twice in early September he was caught playing cards, signed at least one disciplinary sheet, and 2 weeks after the second occasion he was demoted.

Koceski informed Elvik of the demotion. He testified that the reason was Elvik's ''failure to perform his—his duties up to the minimum standards that were set. In addition, he was caught playing cards instead of getting the job done. There was numerous paperwork items that weren't being filled out properly, and he'd been counseled on it several times, and just didn't improve.''

The poor performance reason advanced by Koceski appears to have been an afterthought for purposes of the hearing rather than a reason. It was not corroborated. Indeed, Harris did not testify that such was a consideration. Nor is there any evidence that Elvik had other than an excellent record as an employee and a leadman.

No doubt the card-playing incident occurred; but, on this record I conclude that Harris would not have demoted Elvik for it absent Elvik's union activity. The card playing incident for which Harris claims he demoted Elvik occurred in early September, and before Elvik engaged in any union activity. He was given a warning and this apparently ended the matter. Only after Elvik circulated authorization cards and the Union demanded recognition did Harris revive the card playing and demote Elvik.

I do not credit Harris and Koceski. I find their testimony concerning the purported reason for demoting Elvik unpersuasive. I conclude that the Respondent has failed to sustain its burden of proving that Elvik would have been demoted even absent his union activity. I conclude that by demoting Elvik on September 29, the Respondent violated Section 8(a)(3) of the Act.

THE REMEDY

Having concluded that the Respondent engaged in various unfair labor practices, I recommend that it be ordered to cease and desist therefrom and take certain affirmative action.

Since the Respondent closed the Daggett facility in violation of Section 8(a)(3) of the Act, I recommend that it be ordered to reopen that facility, rehire each of the laid-off employees, and make them whole for any loss of wages or other benefits they may have suffered as a result of the discrimination against them, with interest.[4] *F. W. Woolworth Co*., 90 NLRB 289 (1950); *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Ivan Elvik will be rehired to the position of leadman and his backpay calculated using leadman wages.

There is no evidence that ordering the Respondent to reopen the Daggett facility would be ''unduly burdensome.'' *Lear Siegler, Inc*., 295 NLRB 857 (1989).

Closing a facility and laying off the entire bargaining unit is clearly the kind of egregious unfair labor practice which can best be remedied by a bargaining order when a majority of employees have designated the Union. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). Thus, the Respondent will also be ordered to recognize and bargain with the Union as the duly designated representative of its employees in a unit appropriate for collective bargaining.

In cases where a facility is unlawfully closed and ordered to be reopened, the Board requires that the notice to employees be mailed to them and be published in a newspaper of general circulation in the area. *Lear Siegler, Inc*., supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Direct Transit, Inc., Daggett, Califiornia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Shutting down a maintenance facility and terminating employees because the employees seek union affiliation for purposes of collective-bargaining representation.

(b) Demoting an employee from a leadman position because of his activity on behalf of union representation.

(c) Interrogating employees about their interest in or activity on behalf of the Union.

(d) Threatening employees with shop closure because of their interest in or activity on behalf of the Union.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reestablish and resume operations at its Daggett, California facility in a manner consistent with the level and manner of operation that existed before the facility was closed on October 6, 1991; offer reinstatement to all employees laidoff on that date who held a position in the following bargaining unit:

> All mechanics, mechanic leadmen, mechanic trainees, and fuel and wash employees employed by the Respondent at its facility located at 34760 Daggett/Yermo Road, Daggett, California; but excluding office clerical employees, guards, and supervisors, as defined in the Act.

Make them whole for the losses they incurred as a result of the discrimination against them, in the manner specified in the remedy section above.

(b) Preserve and, on request, make available to the Board or its agents for examination and coping, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under this Order.

(c) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the bargaining unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(d) Treat the initial year of union certification as beginning on the date this Order is complied with.

(e) Mail to each employee in the appropriate bargaining unit at his or her last known address and cause to be published in a newspaper of general circulation in Daggett, California, after being duly signed by the Respondent's representative, copies of the attached notice marked ''Appendix.''[6]

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply with it.

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[4] Although unclear from the record, it appears that Gilroy Cordova ceased work on October 3, after learning that he would be laid off on October 11. His backpay should commence as of October 3, although he was named in the notice of October 5.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''